

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

Lewis Brisbois Bisgaard & Smith LLP,	§	
Plaintiff	§	
	§	<b>Civil Action 4:22-cv-3279</b>
Michael Joseph Bitgood a/k/a “Michael	§	
Easton,” <i>et al</i>	§	
Defendants	§	

**Defendant Susan C. Norman’s Notice of Fifth Circuit Action  
Withdrawing its Opinion in *Carswell v. Camp*, cited in Docket 48  
and Issuing A New Opinion on November 30, 2022 (amended)**

**TO THE HONORABLE JUDGE OF SAID COURT:**

In Susan Norman’s Dkt. 48<sup>1</sup> at page 8, she cited the Court to the Fifth Circuit’s June 17, 2022, opinion in *Carswell v. Camp*,<sup>2</sup> for the proposition that the Texas Judicial Proceedings Privilege is immunity from suit,<sup>3</sup> just as the Fifth Circuit held that qualified immunity is “more than a ‘mere defense to liability, . . . “[i]t’s also ‘an immunity from suit.’” *Carswell* at 1065.

In its June 17, 2022, *Carswell* Opinion,, Fifth Circuit held that the trial court must rule on issues of immunity at the earliest possible stage of the litigation.

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<sup>1</sup> *Reply to the Plaintiff’s Consolidated Response in Opposition to Defendants’ Motions to Dismiss*, Dkt 47.

<sup>2</sup> *Carswell v. Camp*, 37 F.4th 1062, 1065–1066 (5<sup>th</sup> Cir. 2022).

<sup>3</sup> *Shanks v. AlliedSignal, Inc.*, 169 F.3d 988, 992 (5th Cir. 1999), and *BancPass, Inc. v. Highway Toll Admin., L.L.C.*, 863 F.3d 391, 397 - 398 (5th Cir. 2017).

On November 30, 2022, on its own motion, the Fifth Circuit withdrew its June 17, 2022, Opinion in *Carswell*, cited in Dkt. 48 and issued the attached opinion. See *Carseell II*, Attachment 1 for the Court's information.

As stated on November 30, "Jurisdiction is always first." *Carswell v. Camp*, 2022 U.S. App. LEXIS 33072 \*; \_\_\_ F.4th \_\_ at \*3. The *Carswell II*, opinion echoed its *Carswell I* Opinion at \*5. Both *Carswell I* and *Carswell II*, hold that:

"[A] defendant's entitlement to qualified immunity must be determined "at the earliest possible stage of the litigation." . . . That's because qualified immunity is more than "a mere defense to liability." . . . It's also "an immunity from suit." . . . And one of the most important benefits of the qualified immunity defense is "protection from pretrial discovery, which is costly, time-consuming, and intrusive." . . . a "refusal to rule on a claim of immunity" deprives a defendant of his "entitlement under immunity doctrine to be free from suit and the burden of avoidable pretrial matters". *Carswell II*, at \*5. (Internal cites omitted).

Respectfully submitted.

/s/ Susan C. Norman  
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### **Certificate of Service**

I hereby certify that on the 2<sup>nd</sup> day of December 2022, I electronically filed the foregoing document with the Clerk of the District Court through the ECF system and an email notice of the electronic filing was sent to all attorneys of record.

/s/ Susan C. Norman  
Susan C. Norman, *pro se*